

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

WARD HUNNEL,

Defendant.

CASE NO. 8:06CR63

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 34). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant pleaded guilty to illegally importing large mouth bass. He objects to the 2-level enhancement in ¶ 27. The enhancement is pursuant to U.S.S.G. § 2Q2.1(b)(2)(B) because, according to the PSR and the Addendum, because the bass were not tested for large mouth bass disease as required by law and would have been placed in area lakes, the offense created a significant risk of infestation or disease transmission potentially harmful to humans, fish, wildlife or plants. The objection is denied, as the enhancement is appropriate when a wildlife regulation aimed at protecting public health is violated, regardless of the lack of identifiable disease. *United States v. Paluch*, 84 Appx. 740, 746 (9th Cir. 2003).

The Court adds that, if the plea agreement provision requiring a sentence of probation pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) is upheld, the objection is moot.

IT IS ORDERED:

1. The Defendant's Objection to the Presentence Investigation Report (Filing No. 34) is denied ;

2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 6th day of February, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge